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SUPREME COURT OF THE UNITED STATES

October Term, 1940

No. 502

WILLIS COX,
WALTER CHAPLINSKY, et al.,
Appellants

v.

STATE OF NEW HAMPSHIRE
Appellee

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW HAMPSHIRE

APPELLANTS' BRIEF

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APPEAL FROM THE SUPREME COURT OF
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APPELLANTS' BRIEF

Opinions Below

The opinion of the New Hampshire Supreme Court is not yet officially reported, but is unofficially reported in 16 A. (2) 508.

Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code [28 USC 344 (a)].

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 46, an appeal may be taken in any case which under prior statute could be received as a matter of right on writ of error.

Timeliness

The judgment of the Supreme Court of the State of New Hampshire was rendered and entered on June 20, 1940. (Record, page 252) The opinion of that court was delivered on the same date and appears in the Record at pages 238-251. No motion for reargument was filed. (R. pp. 252, 259) Thereby the judgment of the New Hampshire Supreme Court as rendered and entered June 20, 1940, became final as of such date.

A petition for appeal to the United States Supreme Court was duly and timely filed with the New Hampshire Supreme Court (R. pp. 252-256), which was duly and timely allowed (R. pp. 256-257) and docketed with this Court within ninety days from the date that the judgment of the New Hampshire Supreme Court became final.

This Court has noted probable jurisdiction as to appeal of this case.

The Statute

The statute, the constitutionality and validity of which as construed and applied to appellants is here drawn in question, is Chapter 145, Sections 2, 3, 4 and 5, of the Public Laws of the State of New Hampshire, and which statute reads,

CHAPTER 145 Public Laws of New Hampshire

Section 2: THEATRICALS: PARADES: MEETINGS.

No theatrical or dramatic presentation shall be performed or exhibited, and no parade or procession upon any public street or way, and no open-air public meeting upon any ground abutting thereon, shall be permitted, unless a special license therefor shall first be

obtained from the selectmen of the town, or from a licensing committee for cities hereinafter provided for.

Section 3: LICENSING BOARD.

Any city may create a licensing board to consist of the person who is the active head of the police department, the mayor of such city and other person who shall be appointed by the city government, which board shall have delegated powers to investigate and decide the question of granting licenses under this chapter, and it may grant revocable blanket licenses to fraternal and other like organizations, to theatres and to undertakers.

Section 4: LICENSES: FEES.

Every such special license shall be in writing, and shall specify the day and hour of the permit to perform or exhibit or of such parade, procession or open-air public meeting. Every licensee shall pay in advance for such license, for the use of the city or town, a sum not more than three hundred dollars for each day such licensee shall perform or exhibit, or such parade, procession or open-air public meeting shall take place; but the fee for a license to exhibit in any hall shall not exceed fifty dollars.

Section 5: PENALTY.

If any person shall violate the provisions of the preceding sections he shall be fined not more than five hundred dollars; and it shall be the duty of the selectmen to prosecute for every violation of this chapter.

The New Hampshire Supreme Court and the courts below held that the statute was not unconstitutional and that it did not abridge appellants' freedom to worship ALMIGHTY GOD, freedom of speech, of press, and of assembly, in violation of the Fourteenth Amendment to the United States Constitution. Accordingly, that court sustained the

statute's application to appellants' acts and decided in favor of its validity and held it to be constitutional as applied to appellants.

Statement

Appellants, Willis Cox, Walter Chaplinsky, John Konides, Arvid E. Moody, and Ovila Paquette, and 63 other persons were arrested on the evening of July 8, 1939, by the police of the City of Manchester, New Hampshire, for alleged violation of the aforementioned statute. (R. pp. 33-35)

Each of such sixty-eight persons was prosecuted by warrant and complaint, tried, convicted and fined by the Municipal Court of Manchester. (R. p. 234) Each duly appealed to the Superior Court of Hillsborough County to later have a trial de novo. (R. p. 1)

Upon appeal to the Superior Court it was agreed that the five appellants herein would be tried and that the remaining 63 defendants would abide by whatever final decision would be made as to the five named appellants herein. (R. pp. 125, 5)

On November 20, 1939, the cases involving the five appellants named herein were tried to a jury before Oscar L. Young, Presiding Justice of the Superior Court, which resulted in their being found guilty by the jury on November 22, 1939. (R. p. 1) Thereafter, in due time, the same sentence was imposed against the five appellants named herein and each of the other 63 defendants by Judge Young as was imposed against each by the Manchester Municipal Court.

Each of the 68 defendants has posted bond in required amount to suspend execution of the judgment until final disposition is made of these cases on appeal.

The facts as established by the evidence are these:

All sixty-eight defendants and 20 other persons met at Odd Fellows Hall, located at 83 Hanover Street in the City of Manchester, New Hampshire, on the evening of July 8, 1939, for the purpose of engaging in an information march.

This company of 88 persons divided into four or five groups of about 15 to 20 persons to each group. Each group then proceeded to a different part of the business district of the city. After reaching their respective territories, each group would line up in single-file formation and then proceed to march along the sidewalk, "single-file," that is, following one another. (R. pp. 140-152, 156-162, 166-168, 175-180, 182-188, 194-200, 215)

While thus marching in single file along the said sidewalks each of the defendants carried a small staff held upright with a sign fastened thereto, reading:

RELIGION IS A SNARE AND A RACKET

and on the reverse side of said sign it read:

SERVE GOD AND CHRIST THE KING

(Exhibit No. 1, R. p. 238)

Some of the marchers carried placards secured to their chests and bodies, before and behind, bearing the statement:

FASCISM OR FREEDOM
HEAR JUDGE RUTHERFORD
AND FACE THE FACTS

(Exhibit No. 2, R. p. 238)

While thus marching they handed out printed leaflets announcing a meeting at a later time to be held in the Odd Fellows Hall in Manchester, where the talk on government entitled "Fascism or Freedom" would be given to the public free of charge. (Exhibit I, R. p. 238)

The trial court below found, and the undisputed evidence showed, that Jehovah's witnesses, including appellants named herein, did not apply for a permit and none was issued for such "information march". (R. pp. 4-5)

There was no evidence and no finding that the traffic,

automobile or other vehicular or pedestrian, was blocked or that the sidewalk was blocked. However, a police officer gave his opinion that the traffic was interfered with. (R. p. 47)

There was a dispute in the evidence as to the distance between the marchers. The prosecution contended that the marchers were about three feet apart, while the defendants all testified that they were from 15 to 20 feet apart, as per their instructions. Photographs, Appellants' Exhibits A to H inclusive, refute the State's evidence and corroborate the defendants' evidence on this point. However, this dispute is not material to any of the issues in this case and will not be discussed further.

The undisputed evidence showed that each of the defendants is an ordained minister of Almighty God to preach the gospel of His Kingdom and to declare publicly in the streets and otherwise the judgments of JEHOVAH GOD written in His Word, the Bible, and in obedience to the command of the Most High God publicly proclaiming that this is the day of God's vengeance when His righteous judgments shall be speedily executed by His King Christ Jesus accompanied by the invisible hosts of heaven who will utterly throw down and destroy all deceptive, fraudulent and hypocritical institutions of earth to clear the way for the continuing increase and expansion of THE THEOCRACY, Jehovah's everlasting Government under Christ Jesus, which Government alone shall hold sway perpetually throughout the entire earth; and that all upright persons who obey its perfect laws shall joyfully hail only that righteous government and thus live upon earth and never die. That they were each engaging in said information marches as such ministers; that their participation in said march was for the purpose (1) of disseminating information in the public interest and (2) was one of their ways of worship and service of ALMIGHTY GOD, in obedience to His plainly written command set forth in Holy Writ. This was not disputed. (R. pp. 123-227)

Before any evidence was offered by either side, and before the case was opened, the appellants filed a motion to dismiss the complaints because of unconstitutionality of the statute as applied. (R. p. 234). At conclusion of the State's case, appellants filed another motion to dismiss the complaint and discharge appellants upon grounds therein stated. (R. p. 236) On November 20, 1939, appellants filed a motion to dismiss (R. p. 234), and on November 21, 1939, filed a motion to dismiss (R. p. 236), and on November 22, 1939, filed another motion to dismiss (R. p. 237). Each of said motions was overruled by the court and exception allowed to appellants.

Bill of exceptions covering all the points here urged was duly allowed by the trial judge, and the case was taken to the New Hampshire Supreme Court on such bill of exceptions. (R. pp. 1-3) The case was timely appealed to that court and duly docketed; and was thereafter argued at the May Term 1940 and submitted on brief.

The State Supreme Court sustained the conviction of each appellant and affirmed the judgment of the trial court assessing a fine and costs as to each appellant and as to each of the remaining sixty-three defendants. (R. p. 252)

Federal Questions Presented

Substantial federal questions attacking validity of the statute were raised in the trial court, and thereafter properly carried forward to the New Hampshire Supreme Court for determination. In the trial court such questions were raised by motions to dismiss, filed at various stages of the proceedings. (R. pp. 1-3) As grounds for such motions the appellants contended that the statute as construed and applied to them was invalid and void because it is in conflict with the United States Constitution, Fourteenth Amendment, Section 1, in that as so construed and applied it unlawfully deprives appellants of their rights of freedom to

worship ALMIGHTY GOD according to God-given commands recorded in Holy Writ and according to dictates of appellants' consciences; also, of freedom of speech and of press and of assembly. As further ground appellants contended in the motion that the statute is void *on its face* because of vagueness, indefiniteness and the delegating of arbitrary discretion and discriminatory power to the licensing authority. It was further contended in the motions that the evidence failed to show appellants guilty. (R. pp. 1-3)

These points of law were carried forward and urged in the assignments of error, which were presented to the New Hampshire Supreme Court in the time and manner required by law. (Respondents' Brief, Fol. 169 omitted in printing, R. p. 237.)

The New Hampshire Supreme Court passed upon each of said federal questions or assignments, attacking validity of the statute as applied to appellants, and held the statute valid and constitutional, both on its face and as applied, and found that the Fourteenth Amendment to the United States Constitution was not violated. (R. pp. 238-251)

There was no evidence that the appellants or any of their associate defendants acted boisterously or in a truculent manner. The undisputed evidence showed that their conduct did not involve a violation of the law of morals, or imperil the safety of the state, or violate property rights, or disturb the public peace. The undisputed evidence shows that appellants were engaged in an act of worship of ALMIGHTY GOD by publicly exposing the danger that the people face by yielding to or continuing in the snare of religion, which makes void the commandments of Almighty God.

In the Petition for Appeal and the Assignments of Error and the Statement of Points to be Relied Upon duly filed herein appellants each complain of the judgment of the New Hampshire Supreme Court for and on account of each of the grounds set forth in their brief filed in said State court and which grounds are also set forth in the bill of exceptions duly approved by the trial court.

Specification of Errors to be Urged

Appellants assign the following errors in the record and proceedings in said cause:

The court below committed reversible error in failing to hold that Chapter 145, Sections 2, 3, 4 and 5, of the Public Laws of New Hampshire, on its face and as construed and applied to appellants is void by reason of the fact that it

A) deprives them of their right of freedom to worship ALMIGHTY GOD according to God-given commands recorded in Holy Writ and in accordance with their consciences, all in violation of Section 1, Fourteenth Amendment, United States Constitution;

B) deprives appellants of their right of freedom of speech and of press, in violation of the United States Constitution, Fourteenth Amendment, Section 1;

C) deprives appellants of their right of freedom of assembly, in violation of the United States Constitution, Fourteenth Amendment, Section 1;

D) is void on its face inasmuch as it vests in the licensing authority named therein unreasonable and unlimited arbitrary and discriminatory powers and prescribes no conditions upon which said authority may or may not grant or refuse a license, thus denying equal protection of the laws contrary to the United States Constitution, Fourteenth Amendment, Section 1;

E) is void on its face in that it is vague and indefinite and thus denies equal protection of the laws contrary to the United States Constitution, Fourteenth Amendment, Section 1.

Points for Argument

POINT ONE

The statute as construed and applied to appellants unlawfully deprives them of their right of freedom to worship Almighty God according to God-given commands recorded in Holy Writ and in accordance with their consciences, all in violation of Section 1, Fourteenth Amendment, United States Constitution.

POINT TWO

The statute as construed and applied to appellants unlawfully deprives them of their right of freedom of speech and of press, in violation of the United States Constitution, Fourteenth Amendment, Section 1.

POINT THREE

The statute as construed and applied to appellants unlawfully deprives them of their right of freedom of assembly, in violation of the Federal Constitution's Fourteenth Amendment, Section One.

POINT FOUR

The statute in question is void on its face inasmuch as it vests in the licensing authority named therein unreasonable and unlimited arbitrary and discriminatory powers and prescribes no conditions upon which said authority may or may not grant or refuse a license, thus denying equal protection of the laws contrary to the United States Constitution, Fourteenth Amendment, Section One.

POINT FIVE

The statute in question is void on its face in that it is vague and indefinite and thus denies equal protection of the laws contrary to the Federal Constitution's Fourteenth Amendment, Section 1.

ARGUMENT

POINT ONE

The statute as construed and applied to appellants unlawfully deprives them of their right of freedom to worship Almighty God according to God-given commands recorded in Holy Writ and in accordance with their consciences, all in violation of Section 1, Fourteenth Amendment, United States Constitution.

"Liberty" of all persons, as expressly protected against curtailment by a state, embraces not only one's right to freedom from physical restraint, but extends rightly to his free exercise and enjoyment of the fundamental personal privilege to entertain any opinion and to *practice* any RIGHT principle, which liberty and privilege even the Congress of the United States is constitutionally estopped from infringing, and which liberty and privilege (safeguarded under the Fourteenth Amendment, Section 1) each State is likewise estopped from infringing.

Schneider v. State,
308 U. S. 147

Thornhill v. Alabama,
310 U. S. 88

Carlson v. California,
310 U. S. 106

Lovell v. City of Griffin,
303 U. S. 444

Cantwell v. Connecticut,
310 U. S. 296

The judgment of the court below should be reversed and appellants completely discharged because the essential privilege of each appellant to worship Almighty God in accordance with God's written law and with the person's conscientious understanding of the Maker's requirements prescribed in that law, has been most wrongfully and unlawfully denied to appellants through the judgment of conviction by the court below.

In the high councils of this Nation and of its every State Almighty God is formally called upon continually for guidance, such as in the administering of oaths, opening of courts and legislatures with prayer that the will of Almighty God be done. In fact, it is a fundamental proposition of law that is so firmly settled as not to require the citation of any authority that all the courts of this land take *judicial notice of the Bible* and all of its contents from cover to cover. Appellants testified that each is a minister of Jehovah God and the prosecution's witnesses likewise testified that each appellant is one of Jehovah's witnesses, a minister of the gospel of God's Kingdom.

The renowned Blackstone in his *Commentaries* on the common law has plainly expressed the law to be followed by this court in this matter. See Blackstone *Commentaries,* Chase 3d ed., pp. 5-7.

From its beginning this country has been recognized as a "Christian nation"; meaning that its inhabitants try to follow the lead of Christ Jesus, the Son of the ALMIGHTY ONE, JEHOVAH.

The law of His Father the Lord Jesus Christ always obeys.

Every follower of Christ Jesus is duty-bound likewise to obey the law of JEHOVAH.—See Psalm 40:8; 1 Peter 2:21; Deuteronomy 11:27.

As one wholly consecrated and devoted to the service of Almighty God under His Son's lead, each appellant is also an ordained minister of Almighty God to preach the gospel of God's kingdom under Christ Jesus. For anyone like ap-

pellants willingly to disobey the commandments of Almighty God would result in the destruction of such disobedient one, as each appellant sincerely and conscientiously believes.

To worship Almighty God means to obey His commandments; therefore, to serve Him as commanded by His written law. The words of Christ Jesus are, "Thou shalt worship the Lord thy God, and him only shalt thou serve." (Matthew 4:10) "God is a Spirit; and they that worship him must worship him in spirit and in truth."—John 4:24.

According to Black's Law Dictionary, "worship" is the offering of honor and adoration to the Divine Being.

In *Weiss* v. *District Board et al.*, 76 Wis. 177 (212), the court says that worship includes making Jehovah the object of supreme affection and *rendering to Him supreme obedience.*

Following are some of the commandments of Almighty God which every follower of Christ Jesus must obey:

"Ye are my witnesses, saith the Lord, that I am God." —Isaiah 43:10-12.

"The Spirit of the Lord God is upon me; because the Lord hath anointed me to preach good tidings unto the meek; he hath sent me to bind up the broken-hearted, to proclaim liberty to the captives, and the opening of the prison to them that are bound; to proclaim the acceptable year of the Lord, and the day of vengeance of our God; to comfort all that mourn."—Isaiah 61:1, 2.

These texts apply to all followers of Christ Jesus. To all such also the following commandments by the Lord are mandatory:

"This gospel of the kingdom shall be preached in all the world for a witness unto all nations: and then shall the end come." (Matthew 24:14) "Go ye into all the world, and preach the gospel to every creature."—Mark 16:15.

"If thou dost not speak to warn the wicked from his way, that wicked man shall die in his iniquity; but *his blood will I require at thine hand.* Nevertheless, if thou warn the wicked of his way to turn from it; if he do not turn from

his way, he shall die in his iniquity; but thou hast delivered thy soul."—Ezekiel 33:8, 9.

Almighty God commands His followers to proclaim publicly His commandments and judgments to the people so that all those of honest heart may hear and have opportunity to learn and to choose the way of escape from disaster and to receive life everlasting under THE THEOCRACY, the Kingdom of Almighty God, now here. God's commandments to every true follower of His Son Jesus Christ emphasize that such follower shall publicly proclaim Almighty God's written judgments and HIS condemnation of religion. Furthermore, Proverbs 1:20, 21 says:

"Wisdom crieth without; she uttereth her voice in the streets; she crieth in the chief place of concourse, in the openings of the gates: in the city she uttereth her words."

Appellants verily believe that the act of publicly counseling and informing persons that "Religion is a snare and a racket" AND to "Serve God and Christ the King" is directly and unconditionally commanded by the Almighty God in His law the Bible. We now make reference to the Scriptures above quoted. In acting thus, appellants did exactly as directed by the Lord Jesus Christ. See Mark 6:6, where it is said, "He went round about the villages, teaching." In the Bible it is recorded that Jesus said of the religionist clergy, which necessarily includes religion, that they were liars, murderers, adulterers and adulteresses and were of the Devil and that their father was Satan. See Matthew 23; John 8:44.

The statement "Religion is a snare and a racket" is a mild term when compared with the plain and burning words used by the Lord Jesus concerning religion and religionists when He was on earth.

We now refer to the Bible, of which this court takes judicial notice, and which contains the supreme law, to prove to this court that "religion is a snare and a racket". The Devil sets snares in which unsuspecting persons are caught. It is written, "The fear of man bringeth a snare; but whoso

putteth his trust in the Lord shall be safe." (Proverbs 29:25) It is also written, "Neither shalt thou serve their [religious] gods; for that will be a snare unto thee." (Deuteronomy 7:4-16) See also Judges 2:2, 3; Psalm 106:36. If religion is a snare, then the exhibiting of banners to that effect is a friendly warning to the people of good-will.

Adolf Hitler is a Catholic and a practitioner of religion, and his regime for several years has had formal agreement ("concordat") with and the support of the Roman Catholic Hierarchy institution. It is well known that Hitler constantly consults the wicked spirits, and certainly Hitler and his religion are not teaching the youth morality, integrity, or even common decency. Mussolini of Italy, Franco of Spain and Petain of France are all Roman Catholic totalitarian dictators operating with approval and control of the Roman Catholic Hierarchy of Vatican City.

Religion, as distinguished from sincere following in the footsteps of Christ Jesus, has always been the institution of persecution and crime. Jesus Christ was hanged on a tree by religionists, and His true followers today likewise are persecuted and falsely charged by religionists. Early settlers of America fled from Europe to the bleak shores of America and hewed out of the forests the embryo of this nation on account of persecution at the hand of religionists.

Religion is a racket because it is false in that it does not represent God as claimed but does represent the Devil, as stated by the Lord Jesus Christ. The leading religionists, clergy, put fear into the minds of sincere persons and thereby induce them to embrace religion. The clergy, religionists, teach to such people the doctrine of "purgatory" and many other false doctrines. They teach that the dead are in "purgatory" and many there suffer conscious punishment and torment and that by the prayers of priests, who receive money for uttering such prayers, the 'punishment of those in purgatory' can be shortened. Such is not only a false doctrine, but a wicked defamation of God's name and Word. Such doctrines make God a party to a lie by claiming that He

hears and answers the prayers of men who receive money therefor. Jehovah, the Almighty God, is never a party to granting favors upon a money consideration. This is the most subtle and wicked racket for obtaining the people's money by false representation. There are many other false doctrines taught by religionists, clergy, which injure the people. Therefore it is absolutely and Scripturally true that 'religion is a snare and a racket'.

Thus, to appellants, it is true that religion is a snare and a racket and each did exactly as commanded by Jesus, whose faithful apostle Paul said, 'Speak the truth though it make all men liars.'—Romans 3:4; Ephesians 4:15.

We submit the above as the expressed contention of appellants that it was their duty as followers of Christ Jesus to declare that "religion is a snare and a racket" and that in doing such they were exercising their right of freedom to worship Almighty God.

SUPREME

Almighty God Jehovah is supreme.

All who live must depend upon Him and obey Him. He is the "fountain of life". (Psalm 36:9) One who would live must obey God's law. (John 17:3) "The law of the Lord is perfect, . . . The statutes of the Lord are right . . . the commandment of the Lord is pure."—Psalm 19:7, 8.

When in ancient times the apostles of Jesus Christ were haled before magistrates, charged with preaching the gospel from place to place and publicly, contrary to whim of certain governing officers, the accused answered: "We ought to obey God rather than men." (See Acts 5:17-42.) According to Holy Writ, those officers then "commanded that they should not speak in the name of Jesus, and let them go". Jesus' apostles positively refused to heed that command of men. Instead, they deliberately chose to resume acting in obedience to the command of Almighty God; and hence we read that "daily in the temple, and in every house, they ceased

not to teach and preach Jesus Christ". (Acts 5:40-42) That same rule of the Almighty God every true follower of Jesus Christ boldly and joyfully and deliberately obeys today.

Misuse of legislative devices and misapplication of statutes to prohibit or to subjugate to human control the worship of Almighty God can be no better described than in the words expressed by the psalmist at the dictation of Almighty God to the effect that such is 'framing mischief by law'.—Psalm 94:20.

POINT TWO

The statute as construed and applied to appellants unlawfully deprives them of their right of freedom of speech and of press, in violation of the United States Constitution, Fourteenth Amendment, Section 1.

The admitted facts and undisputed evidence show that appellants on the occasion in question were engaged in an activity of "the press". Even the information on its face and the State's evidence show this fact. The act of distributing printed leaflets and carrying signs advertising a public meeting on a subject of government, and displaying a banner with the words "Religion is a snare and a racket", constitute *press activity*. It is a *way* of conveying information to others. The acts of moving about upon the streets, offering printed literature on Bible questions to the people, distributing literature to pedestrians, and simultaneously exhibiting in the sight of pedestrians signs bearing truthful informative slogans, are *press activities*.

Here is presented a question of utmost gravity and importance. It goes to the very core of the foundation of the United States Government, the Constitution. It is an unalienable right of the appellants and of every inhabitant of the United States of America to acquire information and

to impart it orally, in recorded form, and otherwise, to others. This related to an important subject and affected the rights and the eternal welfare of all persons and was a subject of interest to the appellants as well as to all other right-thinking and sober-minded persons.

The statute here in question, as applied to appellants, is not a valid exercise of the police power. By convicting appellants and holding contrariwise, the courts below have stumbled in the attempt to perform 'the delicate and difficult task of weighing the circumstances and appraising the substantiality of the reasons advanced in support of the regulation' (by means of said statute) of appellants' right of "freedom of the press" secured by the Fourteenth Amendment to the Federal Constitution. As construed and applied to appellants said statute and the conviction thereunder are in direct violation of said constitutional provision.

Cantwell v. Connecticut,
310 U. S. 296

Schneider v. New Jersey,
308 U. S. 147

Hague v. C. I. O. et al.,
307 U. S. 496

Lovell v. City of Griffin,
303 U. S. 444

Solely because the substance of the printed information distributed or displayed by means of banners carried by appellants is novel to some, offensive to others, or even 'shocks the religious susceptibilities' of any, is not a sufficient or substantial ground for invoking the police power to deprive appellants of this right of freedom of the press or the right of freedom of speech. None of the justifications

for denial of these rights exist in the present case. See *Near* v. *Minnesota,* 283 U. S. 697, 707.

POINT THREE

The statute as construed and applied to appellants unlawfully deprives them of their right of freedom of assembly, in violation of the Federal Constitution's Fourteenth Amendment, Section One.

The right of persons to assemble on the streets and sidewalks is an inherent right of the people. It is also their 'imprescriptible right' to use the sidewalks to disseminate information, orally or in printed or otherwise recorded form, and to call important questions to the attention of the public. In fact, this is the best place.

In recent cases involving the right to picket on the streets, this court, speaking through Mr. Justice Murphy, emphasized the points of the preceding paragraph.

Thornhill v. Alabama,
310 U. S. 88

Carlson v. California,
310 U. S. 106

In the case of *Schneider* v. *New Jersey,* supra, Mr. Justice Roberts, speaking for this court, said that the streets are the natural and proper place for dissemination of information and opinion, and that they have been used for this purpose from time immemorial, and also announced the rule that this fundamental personal right cannot be denied or abridged on the ground that the conveniences of the public will be interfered with. In that case it was held the

duty of city and state to leave the streets open for this purpose.

Furthermore, in the celebrated case of *Hague* v. *C. I. O. et al.*, supra, on the question of freedom of assembly and use of the streets this court said:

> "In the *Slaughter-House Cases* it was said, 16 Wall. 79: 'The right to peaceably assemble and petition for redress of grievances, the privilege of the writ of *habeas corpus,* are rights of the citizen guaranteed by the Federal Constitution.
>
> "*Second.* What has been said demonstrates that, in the light of the facts found, privileges and immunities of the individual respondents as citizens of the United States, were infringed by the petitioners, by virtue of their official positions, under color of ordinances of Jersey City, unless, as petitioners contend, the city's ownership of streets, and parks is as absolute as one's ownership of his home, with consequent power altogether to exclude citizens from the use thereof, or unless, though the city holds the streets in trust for public use, the absolute denial of their use to the respondents is a valid exercise of the police power.
>
> " . . . Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens. The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interest of all . . .
>
> "It is enough that petitioners have prevented respondents from holding meetings and disseminating infor-

mation, whether for the organization of labor unions or *for any other lawful purpose.*" [Italics supplied]

From this it is apparent that the court below stumbled in its attempt to perform the delicate and difficult task of appraising the substantiality of the reasons advanced by the State as grounds for denying appellants their constitutional right. We emphasize the fact that this was a *march* or "mobile assembly" *for the purpose of disseminating information* on a subject of extraordinary importance and *public interest,* "Fascism or Freedom," and was not, therefore, one of the "other personal activities".

True, the nature of this "mobile assembly" *way* of communicating information is by some regarded as unusual. Appellants' use of that *way* was, nevertheless, a beneficial and lawful exercise by them of rights safeguarded for every inhabitant of the United States of America by its Constitution.

POINT FOUR

The statute in question is void on its face inasmuch as it vests in the licensing authority named therein unreasonable and unlimited arbitrary and discriminatory powers and prescribes no conditions upon which said authority may or may not grant or refuse a license, thus denying equal protection of the laws contrary to the United States Constitution, Fourteenth Amendment, Section One.

This is argued along with and under Point Five hereof, because both points are so closely interwoven that time and space can be conserved in the interest of the court and others to so present these two points. Reference is therefore made here to the argument under Point Five, infra.

POINT FIVE

The statute in question is void on its face in that it is vague and indefinite and thus denies equal protection of the laws contrary to the Federal Constitution's Fourteenth Amendment, Section 1.

The said statute, Chapter 145, Sections 2, 3, 4 and 5, of the Public Laws of the State of New Hampshire, prohibiting parades and processions without a license, appears word for word at pages 2, 3, supra.

Appellants assert that said statute violates the "due process" clause of the Fourteenth Amendment because it fails to establish an adequate standard to govern the official action of the state or municipality, and is so vague that it fails to inform those who are subject to it what conduct will render them liable to its penalties.

This assertion is based largely upon the decision of this Court in the case of *Hague* v. *C. I. O. et al.*, supra, wherein it was held that a street-meeting ordinance of New Jersey's City of Jersey City, which was invoked by municipal authorities to forbid union members from holding meetings in streets and parks, is "void upon its face". The Jersey City ordinance provided as follows:

> "THE BOARD OF COMMISSIONERS
> OF JERSEY CITY DO ORDAIN:
>
> "1. From and after the passage of this ordinance, no public parades or public assembly in or upon the public streets, highways, public parks or public buildings of Jersey City shall take place or be conducted until a permit shall be obtained from the Director of Public Safety.
>
> "2. The Director of Public Safety is hereby authorized and empowered to grant permits for parades and

public assembly, upon application made to him at least three days prior to the proposed parade or public assembly.

"3. The Director of Public Safety is hereby authorized to refuse to issue said permit when, after investigation of all of the facts and circumstances pertinent to said application, he believes it to be proper to refuse the issuance thereof; provided, however, that said permit shall only be refused for the purpose of preventing riots, disturbances or disorderly assemblage.

"4. Any person or persons violating any of the provisions of this ordinance shall upon conviction before a police magistrate of the City of Jersey City be punished by a fine not exceeding two hundred dollars or imprisonment in the Hudson County jail for a period not exceeding ninety days or both."

The foregoing Jersey City ordinance this Court declared void, in the following language:

"We think the court below was right in holding the ordinance quoted in Note 1 void upon its face. . . . It does not make comfort or convenience in the use of streets or parks the standard of official action. It enables the Director of Safety to refuse a permit on his mere opinion that such refusal will prevent 'riots, disturbances or disorderly assemblage'. It can thus, as the record discloses, be made the instrument of arbitrary suppression of free expression of views on national affairs for the prohibition of all speaking will undoubtedly 'prevent' such eventualities. But uncontrolled official suppression of the privilege cannot be made a substitute for the duty to maintain order in connection with the exercise of the right."

The New Hampshire statute here drawn in question is likewise subject to the criticism that its standard is too vague. It does not declare that a permit is required for ALL street parades, processions and assemblages. The legal rights of citizens on sidewalks are certainly not quickly and easily definable. It is presumably the purpose of this statute to define a part of those rights. This argument is not intended to raise fanciful and strained objections. Testimony in this case showed that the information march was deliberately arranged with this statute in view. That is, the persons participating were instructed in advance to walk on the sidewalk in *single file,* at least *twenty feet apart.* In such array they would be ordinary pedestrians, causing no more interference with others than any orderly pedestrian. It is true that there was conflict in the testimony as to whether or not there was any interference with pedestrians, but that conflict in the testimony serves undeniably to emphasize *the issue* here involved, for it demonstrates that no standard is defined as to what constitutes interference. The result is that the officers have uncontrolled discretion in determining whether or not a given joint or common movement upon the streets of two or more persons falls within the limits of this ordinance. Under the *Hague* case such uncontrolled discretion is held to be an unconstitutional grant of power.

This court has frequently considered the constitutionality of statutes and ordinances couched in language as vague as the language of the statute here challenged. For example, a statute of Oklahoma made it criminal for contractors doing state work to pay workmen less than the "current rate of per diem wages in the locality where the work is performed". In *Connally* v. *General Construction Co.,* 269 U. S. 385, this was held to violate the due process clause of the Fourteenth Amendment.

The New Hampshire statute here involved is subject to the same criticism, for the standard established therein is likewise "composed of a multitude of gradations". A given "procession" which might interfere with pedestrians at

noon or at 6 P.M. might find a clear sidewalk at 10 A.M. or at 3 P.M. A large number of possible situations can be imagined. It is certainly not an exaggeration to say, in the language of the court, "that men of common intelligence must necessarily guess at its meaning and differ as to its application." For example, would a picket line in which two or more individuals were walking single file ten feet apart, moving up and down the sidewalk, constitute a parade or procession? Suppose the individuals in the picket line were walking two abreast, each couple ten feet from the other? Without discussing the matter any further, it would seem that such picketing should not require a permit. Is such manner or *way* of disseminating information properly and rightly restricted solely to use by persons concerned in a so-called labor dispute? Is it not rightly usable as a *way* of publication or dissemination of proper and beneficial information by any person for any lawful purpose?

The decision of this court in the case of *Yick Wo* v. *Hopkins*, 118 U. S. 356, is the leading authority on this subject. It clearly and definitely decided that an ordinance conferring arbitrary authority upon the Board of Supervisors to grant or refuse permits for conduct of a laundry business was invalid as denying *equal protection* of the laws, within the Fourteenth Amendment to the Federal Constitution. This court quoted with approval (at pages 372 et seq.) the following from a Maryland case:

> "It lays down no rules by which its impartial execution can be secured, or partiality and oppression prevented . . . ; and when we remember that this action or non-action may proceed from enmity or prejudice, from partisan zeal or animosity, from favoritism or other improper influences and motives easy of concealment and difficult to be detected and exposed, it becomes unnecessary to suggest or comment upon the injustice capable of being wrought under cover of such a power, for that becomes apparent to everyone who

gives the subject a moment's consideration. In fact, an ordinance which clothes a single individual with such power hardly falls within the domain of law, and we are constrained to pronounce it inoperative and void."

When considering the New Hampshire statute here challenged the important thing to be borne in mind is the fact that nowhere therein does it grant the public the right to have a *mobile assembly* or information march or procession which, we submit, is an assembly within the meaning of the Constitution. The statute says that there shall be no "parade or procession" unless by license. By terms the statute gives the licensing authority the privilege to so route and regulate a parade or 'mobile assembly' as to largely or completely nullify its effectiveness and thus amputate the right to have such.

Appellants confidently submit that the statute here drawn in question is void because of vagueness and indefiniteness, and because of conferring arbitrary and discriminatory powers. See and carefully read the following cases:

Herndon v. Lowry,
301 U. S. 242

United States v. Cohen Grocery Co.,
255 U. S. 81

Stromberg v. California,
283 U. S. 359

Lanzetta v. State,
306 U. S. 451

Cline v. Frink Dairy Co.,
274 U. S. 445

Connally v. General Constr. Co.,
269 U. S. 385

International Harvester Co. v. Kentucky,
234 U. S. 634, 638
234 U. S. 216

Smith v. Cahoun,
283 U. S. 564

Small Co. v. American Sugar Ref. Co.,
267 U. S. 233

CONCLUSION

For the reasons hereinbefore discussed the judgment of the New Hampshire Supreme Court affirming the conviction of appellants should be set aside and the appellants discharged.

Confidently submitted,

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